



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1997

Mr. Gerald P. Senk Jr.
Chief of Police
Elsa Police Department
P.O. Box 427
Elsa, Texas 78543

OR97-2406

Dear Chief Senk:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110003.

The Elsa Police Department (the "department") received a request for "a copy of Officer Aranda's entire personnel file, which would include all documentation and tape recordings involving this investigation." In response to the request, you submitted to this office for review the information you assert is responsive. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the Seventy-Fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Gov't Code § 552.108. You assert that "the release of the information we have developed would interfere with the detection, investigation or prosecution of this incident of either the officer or the complainant." After reviewing the submitted records, we believe that the material at issue is information of a law enforcement agency that deals with the investigation and prosecution of crime.¹ As the requested information relates to a criminal investigation, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, most of the information at issue may be withheld pursuant to section 552.108(a)(1).

¹However, where no criminal investigation or prosecution results from the investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982).

We note, however, that you must release the type of information that is considered to be basic front page offense report information even if this information is not actually located on the front page of the offense report. See Gov't Code § 552.108(c) (basic information about arrested person, arrest and crime not excepted by section 552.108); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Section 552.108 provides that you may withhold the remaining information from disclosure, although you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written in a cursive style.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 110003

Enclosures: Submitted documents and audio tapes

cc: Ms. Victoria Guerra
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(w/o enclosures)